

REMARKS

This paper is being provided in response to the Final Office Action dated September 15, 2006, and the Advisory Action dated January 18, 2007, received for the above-referenced application and accompanies a Request for Continued Examination (RCE) filed herewith. A Notice of Appeal was filed by Applicants and received by the USPTO on February 12, 2007, and that time period for filing a response runs from this date. In this response, Applicants have amended claims 10-14 to clarify that which Applicants consider to be the invention. Applicants respectfully submit that the amendments to the claims are fully supported by the originally-filed specification. Further, as discussed below, Applicants submit herewith a Declaration under 37 C.F.R. 1.131 executed by the inventors.

As an initial matter, Applicants would like thank Appeals Specialist Lynne Browne for the courtesies extended in the telephone discussion on April 25, 2007, with Applicants' representative. In view of this discussion, Applicants submit the present response and accompanying RCE.

The rejection of claims 1-6 and 10-14 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent App. Pub. No. 2004/0205384 to Lai et al. (hereinafter "Lai") in view of U.S. Patent No. 6,052,308 to Pitts (hereinafter "Pitts"), the rejection of claims 7-9 under 35 U.S.C. as being unpatentable over Lai in view of Pitts and further in view of U.S. Patent App. Pub. No. 2005/0160311 to Hartwell, et al. (hereinafter "Hartwell"), and the rejection of claims 15-20 under 35 U.S.C. 103(a) as being unpatentable over Lai in view of Hartwell and further in view of

Pitts, are all hereby traversed in view of the submission herewith of a 131 Declaration, as further detailed below.

The Lai reference is a published U.S. patent application that was filed in the United States on February 18, 2004, and published on October 14, 2004. The present above-captioned patent application to Cartmell, et al. (hereinafter “the present patent application”) was filed in the United States on March 29, 2004. Accordingly, the Lai reference is prior art under 35 U.S.C. 102(e).

Applicants submit herewith a revised Declaration under 37 C.F.R. 1.131 that has been executed by all the inventors (hereinafter “the 131 Declaration”) as required by the Examiner in reference to MPEP 715.04(I). As set forth below, the attached 131 Declaration provides facts sufficient to establish conception of the claimed invention prior to the February 18, 2004, effective date of the Lai reference and establish due diligence by the inventors from a time prior to February 18, 2004, until the invention was constructively reduced to practice by the filing of the present patent application on March 29, 2004. Accordingly, in view of the above and the remarks set forth below, Applicants submit that any rejections using the Lai reference should be withdrawn.

As a brief background, in response to the Final Office Action dated September 15, 2006, Applicants submitted a revised Declaration Under 37 C.F.R. 1.131 with two Exhibits (A and B). This revised 131 Declaration was a modified version of a prior 131 Declaration submitted in response to the non-final Office Action dated June 23, 2006, which the Examiner had rejected as

failing to establish conception of the invention before the effective date of the reference and for not being signed by all of the inventors. The most recently submitted revised 131 Declaration is executed by all of the inventors and contained modifications provided in view of the Examiner's comments. The Advisory Action dated January 18, 2007, received by Applicants indicated that the revised 131 Declaration will not be considered and that certain amendments have not been entered as being unsupported in the specification. In the present response and RCE, Applicants resubmit the revised 131 Declaration and submit amendments to claims 10-14. As set forth below, Applicants traverse any conclusion that the revised 131 Declaration does not sufficiently establish conception or diligence and that the amendments to claims 10-14 are not supported by the originally-filed specification.

Applicants respectfully submit that the revised 131 Declaration establishes conception of the invention as required under 37 C.F.R. 1.131. This is supported by MPEP 715.07(I) which contains explicit statements reflecting the decision of the Board of Patent Appeals and Interferences in *Ex parte Ovshinsky* 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989). In *Ovshinsky*, the Board specifically states the following:

We point out to the examiner that (1) all the evidence must be considered in its entirety, including the Rule 131 declarations and accompanying exhibits, records and "notes", (2) an accompanying exhibit need not support all of the claimed limitations but rather a missing feature may be supplied by *the declaration itself*...and (3) it is entirely appropriate for appellants to rely on a showing of facts set forth in the *Rule 131 declarations themselves* to establish conception of the invention prior to the effective date of the reference. (emphasis added)

With respect to establishing conception of the presently-claimed invention, Applicants refer to the revised 131 Declaration and particularly paragraphs (4), (5), (6), (8), (10) and Exhibit A. In these paragraphs, the inventors specifically assert facts surrounding the conception of the

features of the presently-claimed invention. The inventors assert that before February 18, 2004, they developed all of the features of the invention that are presently included in independent claims 1, 10 and 15. In support thereof, the inventors state that before February 18, 2004, they prepared an internal EMC Corporation document that is included as Exhibit A in the 131 Declaration, and they direct specific attention to portions of the Exhibit that address hardware implementation, software requirements and limitations, and software design concepts concerning Symm7 Mirrored Memory and explicitly "Mirrored Memory Hardware Implementation", "6 Different Mirrored Memory System States", "Memory Access Functional Layering" and "Failover and Synchronization State." The inventors also assert facts, in paragraphs (7), (8), (9), (10) and corroborated by Exhibit B, that support the conclusion that, after conception, the inventors were reasonably diligent from a time prior to February 18, 2004, until the invention was constructively reduced to practice by filing the present patent application on March 29, 2004.

Accordingly, Applicants submit that early conception of all of the presently-claimed features of the invention is supported in the revised 131 Declaration taking into account the explicit and detailed statements of facts provided by the inventors and the corroborating evidence provided by Exhibit A, and that the inventors were reasonably diligent for the necessary time, as required under 37 C.F.R. 1.131.

In view of the above, Applicants submit that the revised 131 Declaration is sufficient to antedate U.S. Patent App. Pub. No. 2004/0205384 to Lai, et al. filed February 18, 2004.

Accordingly, Applicants submit that the Lai reference should be removed as prior art to the presently-claimed invention and that all rejections thereover should be withdrawn.

As to the rejection of amended claims 10-14 under 35 U.S.C. 112, first paragraph, as lacking support in the specification, Applicants traverse this conclusion. In the Advisory Action, the Examiner asserts that Applicants' specification lacks support for a "computer-readable medium." Applicants respectfully disagree. The specification is filled with references throughout to the use of memories and stored information accessible to software and running on processors. For example, on page 13, lines 8-15, Applicants discuss the use of memory 26 as containing tasks that are to be performed by one or more of disk adapter units, host adapter units and RDF adapter units. Further, on page 18, lines 8-18, Applicants disclose that memory/registers are provided with internal memory that supports the functionality described in the specification. Applicants further describe that DMA chips, chip sets or the equivalent may be used to provide functionality. All of the above are examples of computer-readable media for implementing the presently-claimed invention. Any conclusion that Applicants' specification does not support the recitation of a "computer-readable medium" is untenable. Accordingly, Applicants respectfully submit that this rejection should be withdrawn.

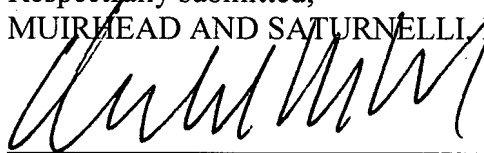
Moreover, the amendments to claims 10-14 to recite that the software is "stored on a computer-readable medium" were made in response to a rejection of these claims 35 U.S.C. 101 by the Examiner as being directed to non-statutory subject matter. The amendments were made to recite accurately the described subject matter of the claimed invention in view of the guidelines set forth in the MPEP. Specifically, MPEP 2106(IV)(B)(1) states as follows:

[F]unctional descriptive material "consists of data structures and computer programs which impart functionality when encoded on a computer-readable medium. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).)...When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases.

Accordingly, Applicants submit that claims 10-14 are fully supported by the originally-filed specification and recite statutorily patentable subject matter.

Based on the above, Applicants respectfully request that the Examiner reconsider and withdraw all outstanding rejections and objections. Favorable consideration and allowance are earnestly solicited. Should there be any questions after reviewing this paper, the Examiner is invited to contact the undersigned at 508-898-8603.

Respectfully submitted,
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